

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HAPAG-LLOYD AKTIENGESELLSCHAFT,

14 Civ. 9949 (VEC)

Plaintiff,

-against-

U.S. OIL TRADING LLC, O.W. BUNKER  
GERMANY GMBH, O.W. BUNKER & TRADING  
A/S, ING BANK N.V., CRÉDIT AGRICOLE S.A.,

**DECLARATION OF  
JOHN R. KEOUGH, III**

Defendants.

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JOHN R. KEOUGH, III declares:

1. I am a partner of the firm of Clyde & Co US LLP, attorneys for defendant U.S. Oil Trading LLC (“defendant” or “USOT”), and am fully familiar with the pleadings and the prior proceedings herein. I respectfully submit this declaration (1) in opposition to the *ex parte* motion for a restraining order by plaintiff Hapag-Lloyd Aktiengesellschaft (“HLAG”) dated December 17, 2014; and (2) in support of USOT’s emergency application for an order to show cause why the Court’s restraining order dated December 19, 2014, should not be vacated or modified.

2. I make this declaration based on my personal knowledge and based on the documents in my files, except where stated as made upon information and belief, and as to those matters I believe them to be true.

3. Several weeks before USOT commenced the first-filed actions in Washington and California, counsel for HLAG and USOT had agreed to terms of security for USOT’s claim against the M/V VIENNA EXPRESS in the form of a letter of undertaking issued by plaintiff’s protection and indemnity association (“P&I Club”), as agents of HLAG (the

“LOU”). HLAG and its P&I Club have failed and refused to comply with their obligations under the LOU.

4. On or about November 26, 2014, plaintiff’s counsel and USOT’s counsel agreed that USOT would accept letters of undertaking for the balance of USOT’s claims against the M/V SOFIA EXPRESS, M/V SANTA ROBERTA and M/V SEASPAN HAMBURG (or an acceptable bond on such terms), on the same terms as the LOU for USOT’s claim against the M/V VIENNA EXPRESS, in exchange for USOT’s promise not to arrest the Vessels to enforce its maritime liens.

5. On November 28, 2014, plaintiff’s P&I Club issued the LOU for USOT’s claim against the M/V VIENNA EXPRESS.

6. Despite repeated requests by USOT’s counsel by email and telephone over the next two weeks, plaintiff’s counsel failed to provide USOT with drafts of the letters of undertaking for the M/V SOFIA EXPRESS, M/V SANTA ROBERTA and M/V SEASPAN HAMBURG for the balance of USOT’s claims.

7. In the meantime, the M/V SOFIA EXPRESS was approaching the port of Tacoma, Washington and the M/V SANTA ROBERTA and M/V SEASPAN HAMBURG were approaching the port of Los Angeles, California. Having heard no response from plaintiff’s counsel over the last week or so, on December 17, 2014, USOT commenced the first-filed actions against those vessels, *in rem*, in the U.S. District Courts in Washington and California to protect USOT’s statutory right to enforce its maritime liens against the Vessels while the Vessels were in the jurisdiction of the U.S. courts, in the event plaintiff’s counsel reneged on their earlier agreement.

8. On December 18, 2014, USOT’s counsel handling the first-filed cases in

California received an email from plaintiff's counsel less than an hour before the "without prejudice" status conference of that date before this Court, at which the undersigned attorney appeared on behalf of another client. USOT was not served with copies of plaintiff's initial pleadings, and USOT's counsel was not authorized to accept service, appear or otherwise act on behalf of USOT at the December 18 conference before the Court.

9. On December 19, 2014, USOT's counsel received another email from HLAG's counsel attaching the Court's Restraining Order.

10. On December 19, 2014, USOT's counsel informed the U.S. District Courts in Washington and California, and the U.S. Marshals in those jurisdictions, that the Court had issued the Restraining Order. USOT's counsel also asked the U.S. Marshal to cease all efforts underway to serve the arrest orders against the M/V SOFIA EXPRESS, M/V SANTA ROBERTA and M/V SEASPAN HAMBURG until further notice.

11. Upon information and belief, the Vessels are or will soon be in the jurisdiction of the U.S. District Courts in Washington and California.

12. Upon information and belief, the Vessels will depart the jurisdiction of any U.S. federal court within the next day or so, if one or more has not already done so.

13. True and accurate copies of the following exhibits are annexed hereto:

**Exhibit**

**Document**

A

Verified Complaint filed December 17, 2014, against the M/V VIENNA EXPRESS and the M/V SOFIA EXPRESS, *in rem*

B

Verified Complaint filed December 17, 2014, against the M/V SANTA ROBERTA and the M/V SEASPAN HAMBURG *in rem*

C	Order dated December 18, 2014, directing issuance of warrant of arrest of M/V SEASPAN HAMBURG
D	Order dated December 18, 2014, directing issuance of warrant of arrest of M/V SANTA ROBERTA
E	Order dated December 18, 2014, directing issuance of warrant of arrest of M/V VIENNA EXPRESS and M/V SOFIA EXPRESS
F	Letter of Undertaking dated November 28, 2014, for USOT's claim against the M/V VIENNA EXPRESS
G	Order dated November 24, 2014, by Judge Castel modifying prior restraining order to permit arrest of M/V BIRCH 6 in related action (14-cv-9282)
H	USOT's sales authorization and sales confirmation for the delivery to the M/V VIENNA EXPRESS
I	USOT's bunker delivery receipt for the delivery to the M/V VIENNA EXPRESS
J	USOT's Invoice No. BWTD 83451
K	USOT's sales authorization and sales confirmation for the delivery to the M/V SOFIA EXPRESS
L	USOT's bunker delivery receipt for the delivery to the M/V SOFIA EXPRESS
M	USOT's Invoice No. BWTD 83463

N	USOT's sales authorization and sales confirmation for the delivery to the M/V SANTA ROBERTA
O	USOT's bunker delivery receipt for the delivery to the M/V SANTA ROBERTA
P	USOT's Invoice No. BWTD 83441
Q	USOT's sales authorization and sales confirmation for the delivery to the M/V SEASPAN HAMBURG
R	USOT's bunker delivery receipt for the delivery to the M/V SEASPAN HAMBURG
S	USOT's Invoice No. BWTD 83450
T	Order dated December 11, 2014, in case styled, <i>Birch Shipping Ltd. v. O.W. Bunker China Ltd. (HK), et al.</i> , 14-CV-9282(VEC)
U	Email dated December 18, 2014, from plaintiff's counsel to counsel for USOT concerning interpleader action.

I declare under penalty of perjury under the laws of the United States of America that the above declaration is true and correct.

Executed this 22nd day of December 2014, at New York, New York.

  
JOHN R. KEOUGH